



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 27, 1994

Ms. Susan M. Cory
General Counsel
Texas Workers' Compensation Commission
Southfield Building, MS-4D
4000 South IH-35
Austin, Texas 78704-7491

OR94-596

Dear Ms. Cory:

The Texas Workers' Compensation Commission (the "commission") received a request for information concerning the dismissal of an employee. You have asked if this information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. The request was assigned ID# 27343.

You indicate that the commission dismissed two employees for violation of the commission's policies governing employee standards of conduct. An attorney for one of the dismissed employees has asked the commission for investigative reports, witness statements, and other information concerning the incident that led to the dismissals. You contend that the requested information is excepted from disclosure under section 552.103(a). To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

You argue that litigation is reasonably anticipated because the requestor is an attorney hired by one of the former employees, who also filed a grievance concerning the dismissal. You state that the commission's grievance administrator rejected the former employee's grievance and application for reinstatement and that the former employee has not appealed that decision to the commission's executive director. You rely upon Open Records Decision No. 551 (1990) to support your contention that litigation is reasonably anticipated. In that decision, the open records request was sent by an attorney who also

demanded damages and threatened to sue the governmental body. *Id.* at 2. However, our review of the attorney's request letter in this situation shows that the attorney has not sought damages or threatened suit, and you have provided no information to show that the former employee plans to pursue the grievance by filing a lawsuit.

In Open Records Decision No. 452 (1986) at 4, this office stated:

Litigation cannot be regarded as "reasonably anticipated" unless there is more than a "mere chance" of it -- unless, in other words, we have concrete evidence showing that the claim that litigation may ensue is more than mere conjecture. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. [citations omitted].

In this situation the commission has not met its burden of showing that there is more than a "mere chance" of litigation. Therefore, the requested information may not be withheld from disclosure under section 552.103(a). We note, however, that the documents at issue disclose the home addresses of the former employees. Although the home address of the requestor's client may be released to this requestor, we note that home addresses of former employees may be released only in accordance with sections 552.024 and 552.117 of the Government Code. Gov't Code § 552.023. We are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/rho

Ref.: ID# 27343

Enclosures: Submitted documents

cc: Mr. Daniel E. Gavrin
Attorney at Law
1600 Marquis One Tower
245 Peachtree Center Avenue
Atlanta, Georgia 30303-1226
(w/o enclosures)